

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Joe M. Mendez, III,

Plaintiff,

v.

Tyson Foods, Inc.,

Defendant.

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Civil Case No. 5:21-cv-00531

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, 28 U.S.C. § 1446, and Federal Rule of Civil Procedure 81, Defendant, Tyson Foods, Inc. ("Defendant"), hereby removes to this Court the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Defendant sets forth the following "short and plain statement of the grounds for removal."

A. THE REMOVED CASE

1. The removed case is a civil action filed with the 25th Judicial District Court of Guadalupe County, Texas, on or about April 26, 2021, styled *Joe M. Mendez, III v. Tyson Foods, Inc.*, Cause No. 21-0882-CV-C ("the State Court Action"). The case arises from an alleged injury incident involving Plaintiff, Joe M. Mendez, III ("Plaintiff" or "Mendez"), while Mendez was employed by Tyson Foods, Inc.

B. DOCUMENTS FROM THE REMOVED CASE

2. Pursuant to 28 U.S.C. § 1446(a), Defendant attaches the following

documents to this Notice of Removal:

- (1) A copy of all process, pleadings, and orders served upon Defendant in the State Court Action.

These documents are attached to this Notice of Removal as *Exhibit 1*.

3. Additionally, Defendant is simultaneously filing a separately signed Disclosure Statement that complies with FED. R. CIV. P. 7.1(a).

C. REMOVAL IS TIMELY

4. Mendez filed the present civil lawsuit against Defendant in the 25th Judicial District Court of Guadalupe County, Texas, on April 26, 2021. Defendant was served with Plaintiff's Original Petition ("the Original Petition") in the State Court Action on or about May 6, 2021. In his Original Petition, Plaintiff asserts causes of action for negligence against Defendant.

D. VENUE IS PROPER

5. The United States District Court for the Western District of Texas is the proper venue for removal of the State Court Action pursuant to 28 U.S.C. § 1441(a) because the 25th Judicial District Court of Guadalupe County, Texas, is located within the jurisdiction of the United States District Court for the Western District of Texas.

E. DIVERSITY OF CITIZENSHIP EXISTS

6. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

7. Mendez is a citizen of Texas.

8. Tyson Foods, Inc. is a foreign corporation formed under the laws of the

State of Delaware. Tyson Foods, Inc.'s primary place of business is in the State of Arkansas. Pursuant to 28 U.S.C. § 1332(c)(1), Tyson Foods, Inc. is not a citizen of the State of Texas.

9. Because Mendez is a citizen of the State of Texas and Defendant is not a citizen of the State of Texas, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

10. In the Original Petition, Mendez alleges that he is seeking "monetary relief of over \$250,000 but less than \$1,000,000."¹ As such, Mendez seeks to recover damages in excess of \$75,000.

11. Based on the aforementioned facts, the current State Court Action may be removed to this Court by Defendant in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Western District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

G. FILING OF REMOVAL PAPERS

12. Pursuant to 28 U.S.C. § 1446(d), Defendant is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk of the 25th Judicial District Court of Guadalupe County, Texas, in which this action was originally commenced.

¹ See, "Plaintiff's Original Petition" at ¶ VII, a true and correct copy of which is produced herein.

H. CONCLUSION

13. Defendant, Tyson Foods, Inc., hereby removes the above-captioned action from the 25th Judicial District of Guadalupe County Texas, and requests that further proceedings be conducted in the United States District Court for the Western District of Texas, San Antonio Division, as provided by law.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
TYSON FOODS, INC.**

CERTIFICATE OF SERVICE

This is to certify that on the 3rd day of June 2021, a true and correct copy of the foregoing has been forwarded to all counsel of record, as follows:

Via ECF:

atoscano@genetoscانو.com

Andrew E. Toscano

GENE TOSCANO, INC.

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/s/ Zach T. Mayer
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